

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
AT&T Corporation	)	
	)	WC Docket No. 02-10593
Petition for Rulemaking To Reform Regulation	)	
Of Incumbent Local Exchange Carrier Rates For Interstate	)	
Special Access	)	

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**COMMENTS OF PAETEC COMMUNICATIONS, INC. IN SUPPORT OF AT&T's  
PETITION FOR A SPECIAL ACCESS RULEMAKING**

PaeTec Communications, Inc. ("PaeTec") respectfully submits these comments in support of AT&T's Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services ("AT&T's Petition").<sup>1</sup>

PaeTec is a nationwide integrated communications provider that offers broadband communications solutions, including data, voice and an expanding array of applications and network integration services, primarily to business and institutional customers.<sup>2</sup> PaeTec accesses its end user customers in almost every instance utilizing high capacity special access circuits

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<sup>1</sup> *In the Matter of AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Special Access Services*, RM No. 10593, Petition of AT&T (filed October 15, 2002), Public Notice, DA 02-2913 (rel. October 29, 2002).

<sup>2</sup> In the District of Columbia, for example, PaeTec serves Georgetown University. The Director of Network and Computing Services at Georgetown University calls PaeTec "One of the two best run companies that I have ever worked with – period...[O]ur bills, once nearly 5,000 pages long are now boiled down to 5 concise pages with details delivered on a CD. With PaeTec, we anticipate savings of at least 50% over our previous local service provider."

leased from ILECs. PaeTec's business has been growing. From end of year 2000 to end of year 2001, PaeTec more than doubled its T1 transmission lines in service from 4,424 (106,176 access line equivalents) to 9,702 (232,848 access line equivalents) and has surpassed 300,000 access line equivalents in 2002. Not surprisingly, in light of the lack of constraints on the ILECs' special access pricing during this same period, the costs of PaeTec's leased transport jumped from 51% to 60% of its overall cost of sales. These costs, which are simply monopoly rents for bottleneck facilities, divert scarce capital from being spent by competitors, such as PaeTec, on productive efforts to further differentiate their services from the ILECs'. Accordingly, PaeTec has a vital interest in the success of AT&T's Petition requesting that the Commission address the ILECs' unjust and unreasonable special access rates.

PaeTec pays the exorbitant rates for special access circuits to reach its end users rather than cost based rates for UNE loops and combinations of UNEs for three reasons. First, PaeTec's experience shows that ILEC special access operational support systems and processes -- although burdened with ordering confusion, provisioning delays and maintenance failures in their own right -- are still better than ILEC operational support systems and processes related to UNEs, particularly UNE combinations.

Second, the "co-mingling" and "use" restrictions applicable to conversion of special access circuits to UNE combinations render that cost based alternative for leasing the same facilities as economically and operationally impractical.<sup>3</sup> In short, PaeTec has no alternatives to

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<sup>3</sup> These "use" and "commingling" restrictions on cost based UNEs, the same facilities PaeTec must lease at inflated special access rates, undermine the pro-competition purpose of the Telecommunications Act by forcing both competitive local exchange carriers *and* interexchange carriers to pay excessive, constantly increasing, unregulated special access rates in order to provide both exchange access and local service. Meaningful competition will not develop as long as the ILECs abuse their monopoly power in the "last mile" marketplace. The ILECs have the best of both worlds. First, ILECs restrict competitors from leasing "last mile" facilities at cost based UNE rates. Second,

leasing its “last mile” access to end users from ILECs because the ILECs face no meaningful competition. There is no place else to go.

Lastly, regulatory uncertainty surrounding the existence of UNEs and UNE combinations make provision of such services unattractive to carriers like PaeTec. PaeTec is interested in marshaling its precious capital and expense dollars in acquiring and serving the customer rather than in lengthy regulatory proceedings. Observing the vagaries of state and federal regulatory interpretation of Congress’ intent to foster competition explicit in the Communications Act of 1934, as amended (“Act”), PaeTec chose to purchase and provision the service ILECs were, and are, most willing to sell. Now that the ILECs have waged a successful fight in eviscerating the practical availability of UNEs, their objective now is to further cement their monopoly status in the last, best hope for high capacity competition in the last mile to the customer premises. As PaeTec, and the telecommunications capital markets, are in no position to advocate return to the wildly inefficient practice of rearranging subterranean New York, Boston, Miami, Philadelphia or Los Angeles to bypass ILEC last mile high capacity bottlenecks, survival of facilities-based competition – for now – remains with the leasing of competitively priced special access services.

Ironically, as AT&T’s Petition underscores, the current flexible pricing regime governing ILEC special access services is based on the Commission’s prediction that a competitive wholesale market for special access services would constrain ILECs from charging monopoly rents.<sup>4</sup> Years of actual experience since the implementation of the flexible pricing regime

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ILECs charge unregulated monopoly rents for these same facilities pursuant to the current ineffectively regulated special access pricing regime.

<sup>4</sup> See *Worldcom v. FCC*, 238 F.3d 449, 459 (D.C. Cir. 2001) (“The FCC readily admits that its decision to adopt the thresholds contained in the *Pricing Flexibility Order* was dependent, at least in part, on the agency’s predictive forecasts.”); see also *id.* at 462 (“The FCC made a predictive judgment that the amount of collocation required for each trigger will be sufficient to constrain anticompetitive practices by incumbent LECs.”)

demonstrate that the prediction has not come true. PaeTec's experience has consistently been to be treated by ILECs as if they are the only game in town. PaeTec, despite frequent requests to the ILECs, has been unable to benefit by any "flexibility" ILECs are authorized to exercise in order to meet challenges by asserted competitive special access providers. Similarly, AT&T states that over 98% of AT&T's facilities-based local service for business customers using incumbent facilities of DS-1 level or higher is provided on ILEC special access services at exorbitant rates.<sup>5</sup> Moreover, the continuing unregulated pricing regime of these monopoly special access services – a regime that contains no mechanism to fix the problem - ensures that the predicted wholesale competition will not develop.

AT&T's Petition demonstrates ILECs leverage their monopoly power in the provision of special access services by charging patently unjust and unreasonable rates that severely harm both local and long distance competition by grossly inflating their competitors' costs of doing business. The results speak for themselves. For instance, in 2001, the Bells special access returns were 49.26% (BellSouth), 46.58% (Qwest), 54.60% (SBC), 21.72% (Verizon), and 37.08% (Verizon excluding NYNEX).<sup>6</sup> Furthermore, these excessive returns are based on the Bells' own ARMIS reports which utilize *embedded* costs to calculate the rate of return. Just as spectacular as the rates of return is the actual growth in revenues experienced by the Bells. Special access revenues have tripled since 1996 from \$3.4 billion to \$12 billion.<sup>7</sup> At the same time, the Bells' service performance has come under serious criticism by industry groups.<sup>8</sup>

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<sup>5</sup> AT&T's Petition 17.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.* at 14.

<sup>8</sup> *Id.* at 15.

AT&T says 98% of its connections to its customers are over facilities leased from ILECs. PaeTec's experience is similar. There is simply no competitive wholesale market to which carriers may turn. Consequently, the ILECs, absent both regulatory and market restraints, continue to raise prices and realize astronomical returns. Furthermore, the trend is crystal clear and in one direction.

The Commission is currently undertaking a detailed review of the Act's network unbundling requirements. The purpose of that review is to assess whether changes are needed in those unbundling requirements in response to changing technological, market, and operational conditions in the telecommunications industry. AT&T's petition for a special access rulemaking is a necessary complement to the Commission's unbundled network element review. Indeed, the reviews of unbundling requirements and special access regulation are inextricably linked. On the one hand, ILECs vehemently contest the use of cost based prices for UNEs and UNE combinations while charging unregulated monopoly rates for the same facilities under the name of special access. The ILECs support their current and purported additional restrictions on the use of cost based UNEs by contending market alternatives to UNEs such as their own special access services and facilities based competitors exist. There are no such meaningful alternatives.<sup>9</sup> The Commission, in order to satisfy its legal obligation to ensure just and reasonable rates, must grant AT&T's Petition to develop effective regulation on ILECs provision of its monopoly special access services.

PaeTec urges the Commission to grant AT&T's petition to promptly initiate a rulemaking to reform regulation of ILEC rates for special access services. In addition, the Commission

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<sup>9</sup> The destructive effect of the ILECs special access pricing on developing competition becomes greater and greater each day as the Bells gain long distance authority in one state after another.

should grant interim relief pending the completion of the rulemaking, both by reducing special access rates to levels that would produce an 11.25% rate of return and by imposing a moratorium on consideration of further pricing flexibility applications pending completion of the rulemaking. Interim relief is justified by the crisis in today's telecommunications industry. The Commission's reinstitution of just and reasonable rates would dramatically enable PaeTec and other more stable competitors to fairly participate in competing for market opportunities, thus enhancing facilities-based competition overall.

Respectfully submitted,

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Dated: November 27, 2002